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S.A. 133 of 2022 R.odt

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

SECOND APPEAL NO. 133 OF 2022

KRUSHNA RAMDAS PATIL AND ANOTHER

....Appellant

**VERSUS**

SHYAM MOHANLAL **AGRAWAL**

.....Respondent

.....

Advocate for Appellant : Mr. C.P. Patil h/f. Mr. Patil (Borse) Paresh B.  
Advocate for Respondents : Mr. Mukul S. Kulkarni For R/sole  
Caveator

**CORAM :S.G. CHAPALGAONKAR, J.**

**DATE : 18 NOVEMBER, 2024.**

**P.C. :-**

1. The appellant takes exception to the judgment and decree dated 17.11.2018 passed by Civil Judge (Senior Division) Amalner, in Special Civil Suit No. 1 of 2013, as well as judgment and decree dated 8.12.2021 passed by District Judge, Amalner in R.C.A. No. 4 of 2019, by which the suit filed by respondent for specific performance of contract has been decreed against the appellant (original plaintiff).

2. For sake of convenience, hereinafter parties are referred to, as per their original status.

3. The respondent/Plaintiff instituted Special Civil Suit No. 1

of 2013 for specific performance of contract on the basis of agreement of sale dated 11.11.2011 executed by the appellants/defendants in respect of land, which forms part and parcel of Gat No. 169/1A, situated at Ranaiche Bk. Taluka, Amalner, District Jalgaon. It is the case of the plaintiff that defendants are the owners of the suit land. They agreed to sale the land in favour of the plaintiff, for consideration of Rs. 2,51,000/- Per Bigha ( 1 Bigha = 30R). It was agreed between the parties that registered sale deed of the suit land will be executed within one year from the date of agreement. The plaintiff paid earnest amount of Rs. 5 Lakhs at the time of execution of agreement. Thereafter, on 10.1.2012 and 1.2.2012, he paid an amount of Rs. 1 Lakh each. Thereafter, on 11.3.2012, paid an amount of Rs. 50,000/-. The defendants acknowledged receipt of said amount by making endorsement on the agreement. Plaintiff was always ready and willing to perform his part of the contract, hence, requested defendants to accept the balance consideration of Rs. 13,83,500/- and execute the registered sale deed to which defendants avoided. On 17.8.2012, the plaintiff issued public notice in Daily Newspaper regarding agreement to sale. On 13.10.2012. Plaintiff issued notice to the defendants for execution of registered sale deed. However, defendants failed to act upon the said notice. Hence, filed the suit.

4. Defendants, however, refuted the claim of the plaintiff by filing written statement, contending that plaintiff is a businessman, engaged in money lending. The defendants were in need of money. Taking benefit of the need of the defendants, he advanced money and got executed agreement to sale by way of security. Plaintiff released further amount for satisfying the economic needs of the defendants. Defendants

are ready to repay the amount. However, on the basis of alleged agreement to sale, present suit is filed.

5. The trial court framed issued and recorded evidence of the parties. Trial Court accepted plaintiffs case and decreed suit with further direction to the plaintiff to deposit the balance consideration of Rs. 14,67,165/- within a period of one month and directed defendants to execute sale deed by removing encumbrances. The defendants were directed to deliver possession on the execution of sale deed. The First Appellate Court confirmed the judgment and decree passed by the trial court while rejecting appeal filed by defendants.

6. Mr. C.P. Patil, learned advocate appearing for the appellants/defendants would submit that trial court failed to frame appropriate issues based on pleadings of the parties. Although defendants have pleaded about nature of transaction, being by way of security, no issue was framed to that effect. He would further submit that there was no compliance of the mandate under Section 16-C of the Specific Relief Act about readiness and willingness of plaintiff to perform the contract. He points out from the cross-examination of the plaintiff that during the period from 30.10.2012 and 1.10.2013, plaintiff could not tell the dates when he attempted to contact defendants for execution of the sale deed. Plaintiff never asked defendants to remove the encumbrances. In the notice Exh.38, there is no mention about the earnest amount. The plaintiff never sought extension of time to complete the transaction. Plaintiff could not demonstrate the availability of funds to complete the transaction. His bank statement placed at Exh.58 does not show sufficient funds to complete the transaction. Plaintiff has not

attempted to deposit balance consideration amount in the trial Court. Mr. Patil, in support of his contention, placed reliance on the judgment of the Supreme Court of India in the matter of *N.P. Thirugnanam (D) by LRs ..Petitioners vs. Dr. R. Jagan Mokhan Rao and others .. Respondents, AIR 1996 SC 116*.

7. Per contra, Mr. Mukul Kulkarni, learned advocate for the respondent/plaintiff submits that both courts have concurrently recorded a finding that transaction was nothing but an agreement to sale. Defendants have not disputed the execution of documents or receipt of earnest amount. According to him, the agreement was executed on 11.11.2011. The plaintiff paid Rs. 5 Lakhs by way of Earnest Money. Thereafter on 15.11.2012, 1.12.2012 and 11.3.2012, he made further payment of Rs. 2,50,000/-. However, when the defendants made attempt to sale out the property to a third person, plaintiff had issued a public notice dated 17.8.2012 and second notice dated 3.10.2012 seeking execution of sale deed. He would further submit that the plaintiff has already deposited amount towards balance consideration within stipulated period, as directed by the trial court. According to him, no substantial question of law is involved in this second appeal.

8. Having considered submissions advanced by learned advocates for respective parties and on perusal of the reasoning adopted by the courts below, it can be gathered that there is no dispute regarding execution of document in the nature of agreement to sale and payment of earnest amount of Rs. 5 Lakhs at the time of agreement and further amount of Rs. 2,50,000/- within 4 months thereafter. There is no dispute that plaintiff had issued a public notice dated 17.8.2012 asserting his

right to purchase the property based on agreement to sale and notice dated 7.10.2012 issued, calling upon the defendants to execute the registered sale deed.

9. Although, defendants have raised a plea that agreement of sale was executed by way of security towards advances made by the plaintiff, there is absolutely no evidence in support of such contention. It can be observed that defendants have not only accepted the amount at the time of agreement to sale, but accepted further amount in 3 installments, which is acknowledged by them. Although, Mr. C.P. Patil, learned advocate for appellants tries to impress upon this court that non-framing of the issue as regards the nature of the transaction has been fatal, his submission cannot be accepted for the reason that during the pendency of the suit, defendants have never made any attempt for recasting of issue. Perusal of grounds in appeal memo filed before the First Appellate Court shows that no objection as regards to non framing of issue has been pressed in service before Appellate Court. For the first time, submission is advanced in this appeal. However, nothing is brought on record depicting any prejudice being caused to the defendants. Essentially, the suit was for specific performance of contract. It was possible for the defendants to lead evidence as regards to the nature of transaction and pursue trial court to accept the plea. However, such is not the case here. The plea taken in the written statement appears to be formal which has not been pressed into service either during the course of trial or before the First Appellate Court. In absence of any prejudice to the defendants, the contention cannot be accepted at this stage.

10. Second contention raised on behalf of the appellants is that plaintiff failed to prove readiness and willingness in terms of Section 16-C of the Specific Relief Act. Relying upon judgment in case of N.P. Thirugnanam (supra), it is contended that continuous readiness and willingness on the part of plaintiff is a condition precedent to grant relief of specific performance and if plaintiff fails to either aver or prove the same, he must fail. There cannot be dispute over the proposition of law espoused by the Apex Court in the judgment cited supra. However, in the present case, both the fact finding courts have recorded a concurrent finding that the plaintiff was ready and willing to perform his part of the contract. On the basis of stray admissions and circumstances narrated on behalf of the appellants, it is difficult to un-suit the plaintiff. On the other hand, it can be observed that during the period of four months after execution of agreement to sale, plaintiff has released amount of Rs. 2,50,000/- in addition, Rs. 5 Lakhs paid at the time of execution of agreement. When the defendants attempted to transfer the property to a third party, plaintiff immediately came in action. He issued legal notice within time span of one year as fixed for completing transaction, thereby calling defendants to execute the sale deed. Time of one year was stipulated under the agreement for execution of sale deed. During the course of cross-examination when the plaintiff was asked about readiness and willingness to deposit the amount, he positively responded. Even after passing of decree, he has deposited balance consideration amount within stipulated period.

11. In this background, concurrent finding that plaintiff established his readiness and willingness to perform his part of contract needs no interference. No perversity in approach of courts below in

discernible. In that view of the matter, no substantial question of law is made out.

12. Second appeal sans merit, stands dismissed.

[S.G. CHAPALGAONKAR, J]

grt/-